

## ISLAND COUNTY HEARING EXAMINER

Re: Critical Areas Alteration	)	File No. CAA 252/13
Shoreline Conditional Use	)	S-CUP 041/13
Public Transportation & Utility	)	PTU 254/13
	)	
Applicant:	)	FINDINGS OF FACT
Washington State	)	CONCLUSIONS OF LAW
Department of Transportation	)	AND DECISION

---

### **SUMMARY OF APPLICATION AND DECISION**

APPLICATION: The Applicant is seeking permit approval to raise and widen State Route (SR) 532 between Mile Post 2.50 and Mile Post 3.4 running over and through the Davis Slough area of Camano Island. Mitigation for the impact of this project is proposed to occur on Whidbey Island at the Dugualla Bay Preserve adjacent to Dike Road.

The primary project site is located on SR 532, on Leque Island and Camano Island, approximately one-quarter mile west of the City of Stanwood. The project limits are within Sections 22, 23, 26 and 27 of Township 32 North, Range 3 East, Willamette Meridian (W.M.), in Snohomish County and Island County.

The secondary project site at the Dugualla Bay Preserve is located approximately four miles north of Oak Harbor and east of SR 20 and the Whidbey Island Naval Air Station on Whidbey Island. It is situated along the shoreline of Dugualla Bay and can be accessed from Dike Road. The site is located within Section 17 of Township 33 North, Range 2.East, W.M., in Island County. This is the mitigation site for the primary project.

DECISION: The Island County Hearing Examiner hereby approves CAA 252-13, S-CUP 041-13, and PTU 254-13, granting necessary Critical Areas Alteration,

Shoreline and Public Transportation Utility Project Permit Approval, subject to Conditions of Approval.

## **FINDINGS OF FACT**

### INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearing on December 13, 2013.

#### I.

### PRELIMINARY INFORMATION

Applicant: Washington State Department of Transportation

Location: Primary Site: SR532, Leque Island and Camano Island, Washington

Secondary Site: Dugwalla Bay Preserve, approximately four miles north of Oak Harbor and east of SR 20 and the Whidbey Island Naval Air Station, Whidbey Island

The sites are located within Sections 22, 23, 26, and 27, Township 32 North, Range 3 East, W.M. and Section 17, Township 33 North, Range 2 East, W.M.

Applicable Ordinances: Flood Damage Prevention, Chapter 14.02A ICC  
Critical Areas, Fish & Wildlife Habitat Conservation Areas, ICC 17.02.050.C  
Critical Area Alteration Review Criteria, ICC 17.02.060  
General Review Criteria for Critical Areas, ICC 17.02A.040.A  
Critical Area Review Process, ICC 17.02A.040.D  
Alteration of Critical Areas, ICC 17.02A.040.E  
Specific Use Standards for Public Transportation and Utility Projects, ICC 17.02A.050.C  
Critical Areas Mitigation Standards, ICC 17.02A.070  
Wetland Mitigation Ratios, ICC 17.02A.090.I  
Rural Zone, ICC 17.03.060  
Island County Shoreline Master Program (SMP)  
Shoreline Use Classification, ICC 17.5.070  
General Shoreline Use Requirements, ICC 17.05.090  
Road Design and Construction, ICC 17.05.230  
Review Criteria for Conditional Use Permits, WAC 173-27-160

Legal Notices:

Sign Posted: Notice of Application, October 3, 2013

Legal Affidavit of Publication, Notice of Application, Sept 10, 2013  
Legal Affidavit of Publication, Notice of Public Hearing, Nov 23, 2013

Notice of Complete Application, mailed August 28, 2013  
Hearing Date: December 13, 2013

Exhibit Log:

**Binder 1**

1. Staff Report

**Tab 1 – Applications - Combined Applications (reviewed all together)**

2. Combined Application for a Shoreline Conditional Use, Critical Areas Alteration, Public Transportation Utility: Application check list, received 2/14/13
3. 252/13 CAA – application for Critical Areas Alteration.
4. 041/13 S-CUP – application for Shoreline Conditional Use Permit.
  - a. S-CUP additional information project description.
5. 254/13 PTU – application for Public Transportation or Utility Projects.
6. Information regarding application for Flood Development Permit.
7. Route Development Plan SR 532: I-5 to Terry's Corner, dated 12/2001, received

**Tab 2 – / Review Comments / Traffic Analysis Report / Route Development / SEPA Review / Response to review comments**

8. Letter to Alan Soicher from Jason Johnson, Planning re: Review Comments, dated 2/21/13.
9. Memorandum from Stephen Klasinski, Plenary Power of WSDOT, dated 9/3/10, received 3/29/13.
10. Letter to Jason Johnson, Planning from Alan Soicher, re: response to review comments, dated 4/11/13.
11. Letter to Alan Soicher from Jason Johnson, Planning, review comments on additional information, dated 8/8/13.
12. Letter to Jason Johnson, Planning from Alan Soicher, re: response to exhibit 11, dated 8/21/13.
13. Letter to Shane Spahr from Dina Swires, re: Traffic Analysis, dated 8/29/12.
14. Existing vegetation Plan, received 2/14/13. (4 plot maps)
15. Memorandum from Garret Jackson to Shane Spahr, dated 3/29/13, not date received re: Geo Coastal Analysis.
16. Letter to Shane Spahr from Robert Schanz, dated 10/29/12, re: Groundwater Resources Assessment, not date stamped.
17. Determination of Non-significance, received 2/14/13 from WSDOT.
18. Letter to John Maas, US Dept. of Interior from Ken S. Berg, dated 12/12/12, received 2/14/13, re: informal consultation on SR 532 project.
19. Letter to George Ritchotte from William W. Stelle, Jr., US Dept. of Commerce, dated 1/17/13, not date stamped, re: informal consultation.
20. SR 532 Davis Slough Bridge Replacement – 100 Year Flood Plain, not dated.
21. Zoning Maps, received 2/14/13.

22. Directions to Projects, dated 2/14/13.

**Tab 3 – Site Data**

23. Site Data

**Tab 4 – Agency Comments**

- 24. Letter from Tamra Patterson, Building to Jason Johnson, dated 9/30/13.
- 25. Letter from John Bertrand, Public Works to John Bertrand, dated 10/1/13.
- 26. Letter from Aneta Hupfauer, Health Dept. to Jason Johnson, dated 10/14/13.
  - a. Letter to Aneta Hupfauer, Health Dept. from Doug Kelly, Hydrogeologist, dated 10/11/13.

**Tab 5 – Notices**

- 27. Notice of Complete Application from Virginia Shaddy for Jason Johnson to Alan Soicher, dated August 28, 2013.
- 28. Notice of Application for 041/13 S-CUP, 252/13 CAA, 254/13 PTU sent to Whidbey News Times and Stanwood/Camano News for posting.
- 29. Affidavit of Posting the Public Notice Sign, received 10/3/13.
- 30. Affidavit of publication from Whidbey News Times, received 9/10/13.
- 31. Affidavit of publication from Stanwood/Camano News, received 9/10/13.
- 32. Excerpt from exhibit 12, detailing notice within 300', publications, and community meetings held by WSDOT.
- 33. Notice of hearing date letter from Paula Bradshaw, Office of the Island County Hearing Examiner, dated 11/21/13.

**Binder 2 - Reports**

- 34. Biological Assessment, received 2/14/13.
- 35. Wetland and Stream Assessment Report, received 2/14/13.
- 36. Vicinity Map, dated 5/2/13.
- 37. Alignment and Right of Way Plan, dated 5/2/13.
- 38. Roadway Sections, dated 5/7/13.
- 39. Existing Topography, dated 5/7/13.
- 40. Proposed Topography, dated 5/7/13.
- 41. Illumination Plan, dated 10/30/12.
- 42. Island County Permits, dated 5/2/13.
- 43. Temporary Erosion Control Plan, dated 5/7/13.
- 44. Planting Plan, dated 1/23/13.
- 45. Final Wetland and Stream Mitigation Report, received 8/1/13.
- 46. Groundwater Resources Assessment Dugualla Bay Wetland Mitigation Project, received 10/10/13.

**Additional items:**

- 47. Letter from Paula Bradshaw, Office of the Island County Hearing Examiner's Office to Alan Soicher, dated 12/3/13 with enclosed Exhibit #1.
- 48. Affidavit of publication in the Stanwood Camano News 11/23/13.

49. Email from Penny Kelley to Maria Mayrhofer, dated 11/12/13, cc Jason Johnson with attached Exhibit 49 a
  - a. Letter from Department of Ecology to Alan Soicher re: Water Quality Certification Order # 10352.
50. Letter from Alan Soicher to the Honorable Michael Bobbink, dated 12/11/13, received 12/12/13 re: condition 3 on page 12 of 15 of the staff report.
51. WAC 173-26-221 General Master program provisions., provided at hearing 12/13/13
52. E-mail from Alan Soicher to Paula Bradshaw regarding SR 532 Island County shoreline permit (041/13 S-CUP), received 12/17/13.

## HEARING TESTIMONY

Jason Johnson  
Island County Planning & Community Development  
P.O. Box 5000  
Coupeville, WA 98239

Alan Soicher  
1043 Goldenrod Road  
Burlington, WA 98233

David Wechner  
Island County Planning & Community Development  
P.O. Box 5000  
Coupeville, WA 98239

Shane Spahr  
1043 Goldenrod Road  
Burlington, WA 98233

## II.

The Washington State Department of Transportation seeks a number of permits associated with the raising and widening of State Route 532 between milepost 5.32 and running over and through the Davis Slough area of Camano Island. The project will result in a more efficient and secure transportation corridor between Camano Island and the mainland. SR 532 is the only roadway connection between Camano Island and the mainland.

Since the project includes significant work within critical areas (Davis Slough), a second project site, located at the Dugualla Bay Preserve, on Whidbey Island, is proposed as the site for mitigation for the critical areas impacts from the highway project itself.

Both project sites involve work within areas under the jurisdiction of the Shoreline Management Act and Island County's Shoreline Master Program and implementing shoreline regulations.

While the project file is extensive, including a number of professional reviews and studies, neither the primary highway project nor the secondary mitigation project has generated any community comment.

### III.

Testimony and comment at the hearing was limited to Island County's Planning Department and the representatives of the Washington State Department of Transportation [WSDOT]. The Applicant, WSDOT, indicated that the factual matters set forth in the Staff Report were accurate and that they accepted Staff's Recommendation and Conditions of Approval, with the exception of three conditions. These conditions were discussed at the hearing and additional information was submitted by the Applicant, WSDOT, at the hearing.

Ultimately, the concerns about two of the three conditions were resolved, leaving only one disagreement between WSDOT and Island County Planning and Community Development.

WSDOT objects to a requirement in Condition No. 3 of Planning's recommended Conditions of Approval, which requires the development of scenic view parking/pull-off areas along the Dugualla Dike Road, required as part of alteration and improvements to Dugualla Dike Road that is part of the mitigation

project, proposed for the Dugualla Bay Preserve, which is located on Dugualla Dike Road.

It is the Hearing Examiner's understanding that the right-of-way for the Dugualla Bay Dike Road is 80-feet in width. This road is currently a county road. Due to administrative requirements, WSDOT intends to identify the road as a State Highway, prior to and during construction, and then return the road to County control when the project is complete.

There is no evidence that there is insufficient right-of-way to provide scenic pull-offs or parking areas. These areas have been requested by Planning in order to meet the requirements of the Shoreline Management Act, Washington Administrative Code, and Island County Shoreline Master Program, and regulations relating to providing public access to shorelines of the State.

WSDOT representatives have suggested that there would be safety concerns in providing the requested pull-off areas. However, they have introduced no evidence into the record which would indicate a physical inability, due to safety, security, or impact to the shoreline development, or by reasons of incompatible uses, which would support not requiring these pull-off areas. The record as a whole supports a finding that it is physically possible to provide the requested turn-outs in a safe and secure manner which will not adversely affect surrounding uses or negatively impact the shoreline environment. Nor is there evidence that the request will require WSDOT to acquire extra property outside of the current County owned right-of-way.

The issues left to be addressed in regard to WSDOT's objection to Condition No. 3 are limited to legal arguments and will be addressed in the Conclusions of Law.

IV.

Other than the legal issue raised by WSDOT in regard to Condition No. 3, the Parties have agreed to a set of Conditions of Approval for the project. The Findings of Fact set forth in the Staff Report are supported by the record as a whole and are hereby adopted by the Hearing Examiner as Findings of Fact herein, by this reference.

V.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

**CONCLUSIONS OF LAW**

I.

Other than the disagreement over Condition No. 3 described in the Findings of Fact above and discussed in the following Conclusions of Law, WSDOT and Island County Planning and Community Development, both, agree that the proposal, subject to the agreed conditions, meets all of the requirements for the necessary permits, including a permit for a Critical Areas Alteration, a Shoreline Conditional Use Permit, and other requirements for a Public Transportation and Utility Project.

The Hearing Examiner concurs. Subject to the Conditions of Approval attached hereto by the Hearing Examiner, the Examiner concludes that the requested permits should be granted and that the permits so granted will be in compliance with the Island County regulations set forth in pages 3 and 4 of the attached Staff Report. The requested permits should be granted, subject to Conditions.

II.



WSDOT has objected to the requirement in Condition No. 3 that they provide pull-outs for parking and scenic view areas along the Dugualla Dike Road as part of the mitigation project in the Dugualla Bay Preserve, associated with the primary widening and raising of State Highway 532, across Davis Slough and onto Camano Island.

Condition No. 3, as proposed by Staff, reads as follows:

ICC 17.050.230.B (1) states that “roads other than those providing access to approved shoreline uses shall be located away from the shoreline, except when no reasonable alternate location exists. When permitted, development of scenic view parking areas and bicycle trails shall be mandatory.” It is inconsistent with the project minimization and reduction requirements of ICC 17.02A.040.A to require additional widening of the SR532 to install permanent bike lanes. Therefore, the requirements of ICC 17.050.230.B (1) shall be satisfied by the installation of a scenic pullout at either project location. The precise location and design of this pullout may be determined by the applicant during the final engineering phase, subject to approval by Department of Ecology. The location and design of the required pullout should avoid direct Critical Area impacts and minimize buffer impacts to the extent possible.

Condition No. 3 implements ICC 17.050.230.B (1), which reads in relevant part as follows:

**B. Use Requirements**

1. Roads other than those providing access to approved shoreline uses shall be located away from the shoreline, except when no reasonable alternate location exists. When permitted, development of scenic view parking areas and bicycle trails shall be mandatory.

Staff recognized that requiring bike lanes or view access along SR 532, across Davis Slough would be inconsistent with minimizing the impacts of the highway portion of the project, the sensitive shoreline area. Unlike Dugualla Bay

Dike Road, SR 532 is a heavy volume highway and is not well-suited to traffic pull-outs.

Both the widening of SR 532 and the Critical Areas Mitigation Project at the Dugualla Bay Preserve require work to be done within areas of shoreline jurisdiction; require Shoreline Permits; and are subject to the Island County Shoreline Master Program and implementing regulations, as well as the Shoreline Management Act, and implementing Washington Administrative Code Provisions. In this case, Planning concluded that this public access project within shoreline jurisdiction was required to provide new public access opportunities and thus requested Condition No. 3.

WSDOT argues that there are legal barriers that prohibit or relieve them of the obligation to provide public access as part of the requirements to meet the conditions for the necessary shoreline permits.

WSDOT, in support of their position, cites RCW 47.01.260, which reads as follows:

47.01.260 Authority of Department

- (1) The department of transportation **shall exercise** all the powers **and perform all the duties necessary**, convenient, or **incidental to the** planning, locating, designing, **constructing, improving, repairing, operating, and maintaining state highways**, including bridges and other structures, culverts, and drainage facilities and channel changes necessary for the protection of state highways, and shall examine and allow or disallow bills, subject to the provisions of RCW [85.07.170](#), for any work or services performed or materials, equipment, or supplies furnished.
- (2) Subject to the limitations of RCW [4.24.115](#), the department, in the exercise of any of its powers, may include in any authorized contract a provision for indemnifying the other contracting party against specific loss or damages arising out of the performance of the contract.

- (3) **The department is authorized to acquire property as provided by law** and to construct and maintain thereon any buildings or structures necessary or convenient for the planning, design, construction, operation, maintenance, and administration of the state highway system **and to acquire property and to construct and maintain any buildings, structures, appurtenances, and facilities necessary or convenient to the health and safety and for the accommodation of persons traveling upon state highways.**
- (4) The department is authorized to engage in planning surveys and may collect, compile, and analyze statistics and other data relative to existing and future highways and highway needs throughout the state, and shall conduct research, investigations, and testing as it deems necessary to improve the methods of construction and maintenance of highways and bridges. [Emphasis added].

WSDOT also references Amendment 18 to the Washington Constitution [Section 40], which restricts the use of motor vehicle funds to highway purposes.

Without citing any cases, WSDOT states:

“We typically interpret the term “highway purposes” to include project elements that mitigate for project impacts and are imposed as a condition of project approval. For example, if a highway project eliminated a shoreline access point, the replacement of that access as a shoreline permit condition would be treated as highway purpose.

However, this project does not impact shoreline views or access. Therefore, providing new shoreline access cannot be considered mitigation for a project impact. Therefore, I would conclude that providing new shoreline access away from the highway is not a highway purpose and is outside of WSDOT’s authority as an agency and is not a permissible use of highway funds.”

As indicated, no case law, administrative code provisions, or other legal basis is submitted to support the above interpretation.

### III.

The only case law cited by WSDOT is *Koontz v Saint John's Management Dist*, 133 S.Ct. 2586, (2013). WSDOT cites this United States Supreme Court Case for their position that where there is no impact to the public access to, or view of, the shoreline, there is no basis for imposing the condition that shoreline access be added.

WSDOT's reliance on the *Koontz case*, which is an interpretation and, arguably, an extension of the limitations on government authority to demand extractions of private property from owners as a condition for land permit use approval. These limitations are based on the Takings Clause of the 5<sup>th</sup> Amendment of the *United States Constitution*. The Takings Clause forbids government from taking private property without paying compensation to the owner deprived of their property. Like all of the *Bill of Rights*, the Takings Clause is a protection of citizens from arbitrary government power.

In the area of land use permitting, the Supreme Court has applied the Takings Clause in two major cases, *Nolan v. California Coastal Comm'n*, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677, and *Nolan v. City of Tigard*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304.

These cases require a nexus and rough proportionality between the government's demand that an owner relinquish a portion of his property and the actual effects of the proposed land use.

The 5<sup>th</sup> Amendment of the *United States Constitution* protects private property of persons and is not designed to, and does not apply to obligations placed by government on government agencies.

WSDOT raises the above described Constitutional argument, suggesting that the requirement to provide access, as part of the shoreline permits for the

highway construction and the associated mitigation work, violates the *Washington State Constitution*, but provides no authority to support the position.

#### IV.

WSDOT is required to mitigate the impacts to critical areas associated with their project. These requirements flow from both the Shoreline Management Act and from the Growth Management Act regulation of critical areas. In this case, WSDOT has elected to do the mitigation required in an area, the Dugualla Bay Preserve, which requires Shoreline Permit Approval for the mitigation work. Without a shoreline permit, WSDOT would not be able to undertake their proposed mitigation and the highway improvement project could not be approved as proposed. It seems somewhat disingenuous for WSDOT to agree that they are required to do mitigation; that they are required to get the permits necessary to do the mitigation work; that the mitigation itself is necessary in order to build the highway project proposed, and is, therefore, for highway purposes; but that the requirements for the necessary shoreline permits to enable them to do the necessary mitigation work is somehow not for highway purposes.

In any case, the Island County Hearing Examiner does not have the authority to rule on Constitutional issues, or to determine the legality of a local ordinance implementing the Shoreline Management Act.

#### V.

WSDOT's arguments fail to address the fact that the requirements placed on the shoreline permits sought for the mitigation work come from a local ordinance, which must be approved by the Department of Ecology and which must be developed in accordance with the Washington Administrative Code Sections found in WAC 173-26. The Island County Shoreline Ordinance, as adopted, appears on its face to be consistent with the public access requirements of WAC 173-26-221(4)(d)(ii), which reads as follows:

(4)(d) **Public Access Standards.** Shoreline master programs should implement the following standards:  
(ii) Require that shoreline development by public entities, including local governments, port districts, state agencies, and public utility districts, include public access measures as part of each development project, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline environment. ...

It is one of the basic policies of the Shoreline Management Act to maximize, where possible, the ability of the general public to use and enjoy the shorelines of the State which are subject to jurisdiction under the Shoreline Management Act. The Shoreline Management Act, itself, is to be construed liberally in order to carry out its purposes. The Act gives the Department of Ecology the right to adopt administrative provisions to implement the Shoreline Management Act. In carrying out this duty, the Department of Ecology prepared, circulated, and approved WAC 173-26-221, making it mandatory that State agencies, amongst other government entities, include expanded public access measures for every shoreline development where it is safe, feasible, and practicable to do so.

In this instance, WSDOT will be obtaining jurisdiction over the Dugualla Bay Dike Road right-of-way containing the area in which the Dike road will be modified and/or improved, has shown no reason why the requested view pull-offs/parking areas could not be created within the right-of-way, and intends to deed the property back to the County for future maintenance at the end of the project.

Condition No. 3 appropriately implements ICC 17.02A.040.A. ICC 17.02A.040.A, which appropriately implements 173-26-221 by including the requirement that public entities [including State agencies] “include public access measures as part of each development project, unless such access is shown to be incompatible ....”

If WAC 173-26-221, and its progeny, ICC 17.02A.040.A, runs afoul of Section 40 of the 18<sup>th</sup> Amendment of the *Washington State Constitution*, WSDOT has provided no legal authority for the proposition, and, even if such arguable authority was produced, the determination of the relationship between WAC 173-26-221 and Amendment 18 of the *Washington State Constitution* might be outside of the jurisdiction of the Island County Hearing Examiner to resolve.

Island County was required by the Washington State Department of Ecology, pursuant to the Department's authority to implement and approve local Shoreline Master Programs, and, pursuant to WAC 173-26-221, to make mandatory a requirement that, where feasible, shoreline development by public agencies include public access measures. Condition No. 3, recommended by Staff in the Staff Report, carries out the clear language of ICC 17.05.230.

The Hearing Examiner has not been given a legal basis to conclude that WSDOT is somehow exempt from this requirement due to Amendment 18 of the *Washington State Constitution*. Washington Supreme Court cases require parties who raise State Constitutional issues to provide authority before the issue can be addressed. In any case, the Hearing Examiner's jurisdiction is limited to applying local ordinances as written; generally does not include the authority to rule or consider constitutional issues; and even if given the authority in this case, due to the language of ICC 17.05.230, has not been provided any legal authority supporting WSDOT's suggestion that the access requirement in Condition No. 3 runs afoul of Section 40 of the 18<sup>th</sup> Amendment of the *Washington State Constitution*. For these reasons, Condition No. 3 should be included as one of the Conditions of Approval of the permits being sought by WSDOT in this matter.

## VI.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

### **DECISION**

The Island County Hearing Examiner hereby approves CAA 252-13, S-CUP 041-13, and PTU 254-13, granting necessary Critical Areas Alteration, Shoreline and Public Transportation Utility Project Permit Approval, subject to the following Conditions:

1. All work, construction, and mitigation shall conform to the submitted Biological Assessment prepared by the Northwest Region Environmental Services Biology Program, dated October 2012, except that minor non-substantive changes may be made if necessary to comply with the requirements of another permitting agency.
2. All work, construction, and mitigation shall conform to the submitted Final Wetland and Stream Mitigation Report, prepared by WSDOT Northwest Region Environmental Services, dated July 2013, except that minor non-substantive changes may be made if necessary to comply with the requirements of another permitting agency.
3. ICC 17.050.230.B(1) states that “roads other than those providing access to approved shoreline uses shall be located away from the shoreline, except when no reasonable alternate location exists. When permitted, development of scenic view parking areas and bicycle trails shall be mandatory.” It is inconsistent with the project minimization and reduction requirements of ICC 17.02A.040.A to require additional widening of the SR532 to install permanent bike lanes. Therefore, the requirements of ICC 17.050.230.B(1) shall be satisfied by the installation of a scenic pull-out/parking area along the Dugalla Bay Dike Road Project location. The precise location and design of this pullout may be determined by the applicant during the final engineering phase, subject to approval by Department of Ecology. The location and design of the required pullout should avoid direct Critical Area impacts and minimize buffer impacts to the extent possible.
4. To comply with the Island County Flood Damage Prevention Ordinance for a Critical Facility, the lowest finished grade of the SR532 project shall



be three (3) ft above the Base Flood Elevation for the site as determined by NAVD88.

5. All work, construction, and mitigation shall conform to the submitted plans as on file with Island County, except that minor non-substantive changes may be made if necessary to comply with the requirements of another permitting agency.
6. Any comments or conditions in the attached memo dated October 1, 2013 from Island County Public Works/Engineering are hereby adopted as Conditions of this Approval.
7. Any comments or conditions in the attached memos dated October 11, 2013 and October 14, 2013 from Island County Public Health/Sanitation are hereby adopted as Conditions of this Approval.
8. Any comments or conditions in the attached memo dated September 30, 2013 from the Island County Building Inspector/Plans Examiner are hereby adopted as Conditions of this Approval.
9. With the exception of the work shown in the submitted plans, or within the Dugualla Bay Dike Road right-of-way, no clearing, construction, or development activities are permitted within 75 feet of the Ordinary High Water Mark.
10. With the exception of the work shown in the submitted plans, no clearing, construction or development activities are permitted on steep slopes or within 100 feet of steep slopes.
11. All beach areas shall be fully restored to a pre-development condition and shall be replanted with suitable native species to the extent possible. It is understood that some wetland and shoreline will be permanently altered and modified in this course of this project, and the mitigation proposed at the secondary Dugualla Preserve site is intended to mitigate for this. Permanent alterations to wetland and shoreline areas shall be the minimum necessary to complete the project at hand.
12. The Applicant shall comply with all local, state, and federal flood-plain development regulations.

13. The Applicant shall submit annual wetland and intertidal habitat monitoring reports for a period of seven (7) years following the year of permit approval. These reports shall evaluate the success of the mitigation against the goals, objectives, and performance criteria specified in the July 2013 Wetland and Stream Mitigation Report.
14. Erosion and Sedimentation Control Best Management Practices shall be employed during all development activity. No materials shall be stored or stockpiled seaward of the Ordinary High Water Mark, within Critical Areas, or in any unpaved Critical Areas buffers.
15. All construction and demolition debris shall be disposed of at a site approved by Island County Public Works Department and WSDOT. Treated wood must be separated and disposed of at a site approved by Island County Public Works Department and WSDOT. There shall be no dumping or disposing of debris on the beach or in the waters of the state.
16. Applicant bears the full responsibility of notifying site crews of all permit conditions, and shall be held fully accountable for any activity that results in on- or off-site violations, hazards or damages.
17. No shoreline development rights under this permit shall be transferred by sale, lease, or other conveyance of any interest without prior County notification in order to determine if any new owner or operator can meet the terms and conditions of this permit.
18. All shoreline and overwater activities shall be restricted to reasonable hours and/or days of operation when necessary to protect residents and properties from adverse impacts such as noise, light, and glare.
19. The entirety of the attached document, Inadvertent Archaeological and Historic Resources Discovery Plan for Island County, is hereby adopted into this decision by reference. All terms of this adopted document constitute Conditions of Approval for this decision. Compliance with all applicable laws pertaining to archaeological resources (RCW 27.53, 27.44 and WAC 25-48) and human remains (RCW 68.50) is required. Failure to comply with the terms of this adopted attached document, Inadvertent Archaeological and Historic Resources Discovery Plan for Island County, could constitute a misdemeanor and possible civil penalties and/or constitute a Class C Felony.

20. No equipment or vehicles shall be parked or stored within Critical Areas or in unpaved portions of the Critical Area buffer.
21. The Conditions of Approval identified in this Decision are subject to change if any information provided by the Applicant or their authorized representative is found to be inaccurate.
22. This project is required to comply with Washington State and Island County water quality standards, Washington State and Federal laws and regulations protecting archaeological sites and resources and all other pertinent laws, rules, regulations, codes, and ordinances.
23. Applicant shall contact the State Department of Fish and Wildlife (WDFW) to determine if a Hydraulic Project Approval (HPA) permit is required. Contact Doug Thompson at (360) 466-4345 x251 or by email at [thompdst@dfw.wa.gov](mailto:thompdst@dfw.wa.gov).
24. If approved, this permit is valid for a period of two (2) years. The construction, use, work, or activity authorized by this permit shall be commenced within two years of the effective date of this permit. Island County *may* authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the department.

Entered this 7<sup>th</sup> day of January 2014, pursuant to authority granted under the laws of the State of Washington and Island County.

---

MICHAEL BOBBINK  
Island County Hearing Examiner

#### APPEAL PROCESS:

Decisions of the Examiner on Type III applications shall be final and conclusive unless within fourteen (14) days following mailing of such decision a written statement of appeal is filed with the Board by the Applicant, a Department of the County, or Party of Record, who is also an Aggrieved Person. Said statement shall set forth any alleged errors and/or the basis for appeal and shall be

accompanied by a fee pursuant to the fee schedule adopted by the Board; provided that such appeal fee shall not be charged to a Department of the County or to other than the first appellant. The appeal of a Type III decision shall be a Closed Record Appeal.